

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

ORIGINAL

76-6172

United States Court of Appeals
For the Second Circuit

EDWIN NACHBAUR,

Plaintiff-Appellant,

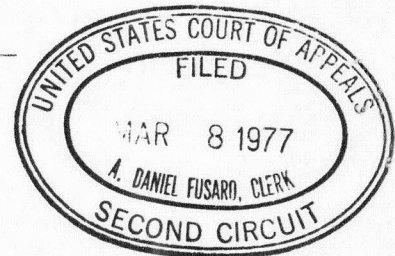
-against-

NATIONAL LABOR RELATIONS BOARD, N.Y.C. POLICE
DEPT, WALTER DELLHEIM, ARGO INSTRUMENTS,
UNITED STATES DISTRICT COURT, EASTERN DISTRICT
OF NEW YORK,

Defendants-Appellees.

On Appeal From The United States District
Court For The Southern District of New York

APPELLANT'S APPENDIX



EUGENE PROSNITZ
Attorney for Plaintiff-Appellant
50 Court Street
Brooklyn, N.Y. 11201
(212) 834-8656

PAGINATION AS IN ORIGINAL COPY

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DOCKET ENTRIES

- 8-29-75 1) Filed Complaint-issued summons.
- 2-19-76 2) Filed Pltff's motion for Appointing Counsel.
- 2-20-76 Fld Pltff's Motion for appointment of Counsel
- 2-20-76 Fld Pltff's Memo in support of appointment of Counsel.
- 6-7-76 Fld Defts W. Dellheim and Argo Instruments Corp's Answer
- 3-17-76 Fld Notice of Motion by Govt for an order dismissing action pur tp 12(b) ... ret 6-2-76-10AM Rm 318.
- 3-17-76 Fld Govt's Memo of Law in support of its motion to dismiss.
- 6-22-76 Fld Summs with Marshal's ret/ served
Gen Counsel of Nation.Labor Rel.Bd. by mail
re No. 233551 dtd 6-21-76
Argo Instr. Corp by Cassin on 5-20-76
E. Meaher, U.S.D.J. ED of NY by personally serv.
on 5-20-76
- 6-22-76 Fld Summs with Marshal ret. Served:
Walter Dellheim by personally served On 5-24-76
Atty Gen Wah D.S. by Certify Mail No. 233550 on 5-21-76
Police Dept City of NY by Lt Dunne on 6-1-76
- 6-25-76 Fld Pltff's Notice of Motion for an order to amend the complaint..ret 7-9-76-10 AM Rm 318.
- 6-25-76 Fld Pltff's rebutal to memo of Fiske and motion for dismissal
- 6-25-76 Fld Pltff's rebuttal to answer of Wm. F. Cassin.
- 6-25-76 Fld Pltff's affdvt of serv of motion, rebutal etc.
- 6-28-76 Fld Pltff's Memo of Law in opposition of memo of deft Neaher of 6-28-76.
- 8-13-76 Fld Deft National Labor Re. Bd's answer.
- 10-4-76 Fld Pltff's motion to dismiss..No ret dates supplied
- 10-19-76 Fld Opinion No. 45258.....Pltff's complt is dismissed So Ordered...Carter, J. mn copy

- 10-22-76 Fld Judgment..Ordered that defts National Labor Relation Bd., Police Dept., City of N.Y., W. Dellheim, Argo Instruments Corp., U.S. Dist. Court, Eastern Dist of NY have Judgment against plttf Edwin Nachbaur dismissing the complt., Burghardt, Clerk. mn/copy
- 10-29-76 Fld Pltff's Notice of Appeal to USCA from Final Judg of 10-22-76 - Copy mailed on 11-3-76 to: National Labor Relation Bd & Eastern Dist Court US Court.

PLAINTIFF'S COMPLAINT IN EASTERN DISTRICT OF NEW YORK,
 ASE NO. 72 CIV. 930

UNITED STATES DISTRICT COURT FOR THE
 EASTERN DISTRICT OF NEW YORK

JUL 10 1964
 CLERK
 U.S. DISTRICT COURT
 EASTERN DISTRICT
 OF NEW YORK

EDWIN NACHBAUR, Plaintiff

vs.

(a) WALTER DELLHEIM
 (b) SIEGFRIED MUELLER, both for and on behalf of
 Argo Instruments Corporation
 (c) JOHN KROMER, for and on behalf of the Inter-
 national Brotherhood of Electrical Workers,
 Local Union No. 3 Defendants

72C 930

COMPLAINT

I am bringing this action before the honorable judges of this court because above-listed defendants have been discriminating, scheming, plotting and conspiring against me resulting in the loss of my employment and consequent financial, emotional, physical and other hardship, losses, damages, and because with this action I am seeking to regain reinstatement in my former position with full back pay (to the date of discharge) of wages, fringe benefits such as employer's contribution to pension fund as agreed upon in union contract, to regain seniority and other related rights, and further to obtain compensation for said financial, emotional, physical and other hardship, losses, damages, character defamation, deprivation of civil rights and such like.

Such relief has been denied to me to this date because of corruption and general decay of law; state and federal officials assisted defendants to obstruct justice.

The Equal Employment Opportunity Commission authorized me to bring this action in this court, sending me a Notice of Right to Sue within 30 Days which I immediately filed with the clerk of this court to stop the running of the 30 day period afforded me to bring such action under the Civil Rights Act of 1964.

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My name is Edwin Nachbaur, and I live at 48 West
89th Street, New York, New York 10024.

Defendants' name and address are listed below:

Defendant (a): Walter Dellheim, General Manager, Argo Instruments Corp.

36-21 33Street, Long Island City, New York

Defendant (b): Siegfried Mueller, Service Manager, Argo Instruments Corp.

36-21 33Street, Long Island City, New York.

Defendant (c): John Kromer, Business Representative, International

Brotherhood of Electrical Workers, Local Union No. 3

158-11 Jewel Avenue, Flushing, New York 11365.

The amount of compensation shall be twohundredthousand
U.S. Dollar jointly payed by Argo Instruments Corporation and the Inter-
national Brotherhood of Electrical Workers, Local Union No. 3.

Additional and further and other action against defendant(s)
be taken as this honorable court may deem just and good.

SWORN TO BEFORE ME
THIS 12th DAY OF JULY, 1972

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Edwin Nachbaur
EDWIN NACHBAUR

48 West 89th Street
New York, N.Y. 10024

Jerry A. Tate
JERRY A. TATE
Notary Public, State of New York
No. 03-2207177
Qualified in Bronx County
Cert. Filed with N. Y. County Clerk
Commission Expires March 30, 1974

BEST COPY AVAILABLE

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A5

DISTRICT COURT MEMORANDUM ORDER DISMISSING CASE NO.
72 CIV. 930

2
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S
U.S. DISTRICT COURT

EDWIN NACHBAUR,

★ MAY 10 1974 ★

Plaintiff,

: TIME AM
P.M.

-against-

72 C 930

WALTER DELLHEIM, SIEGFRIED
MUELLER, JOHN KROMER, ARGO
INSTRUMENTS CORPORATION and
INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL UNION
NO. 3,

Defendants.

-X

MEMORANDUM ORDER

This action having been referred to the Hon.
Vincent A. Catoggio, United States Magistrate, for hear-
ing before him as a Special Master pursuant to the order
of the undersigned dated September 24, 1973, and a report
having been filed by said Magistrate as Special Master on
February 11, 1974, and an objection to the report in the
form of a motion to strike having been received from the
plaintiff pro se on February 19, 1974, and this court
having directed a hearing with respect to the adoption,
modification or rejection of said Magistrate's report and
the same having come on before this court for hearing on

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the 19th day of April, 1974, and plaintiff being represented by his court-appointed counsel, John C. Corbett, Esq., and said counsel having no objection to adoption of the said Magistrate's report, and upon due consideration of plaintiff's objections pro se to adoption of the said report, and good cause having been shown,

NOW, upon the motion of the defendants for the adoption of said report and plaintiff's objections pro se to the proposed order adopting the said report, it is

ORDERED AND ADJUDGED:

1. That the motion of the plaintiff pro se be and the same hereby is denied;
2. That the report of the Hon. Vincent A. Catoggio, United States Magistrate, be and the same hereby is adopted in all respects; and
3. That this action be and the same hereby is dismissed.

Edward R. Neaher

U. S. D. J.

Dated: Westbury, N.Y.
May 9, 1974

A/
PLAINTIFF'S COMPLAINT IN EASTERN DISTRICT OF NEW YORK, CASE NO. 74 CIV. 725
UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF NEW YORK

----- X

EDWIN NACHBAU, Plaintiff

May 10 1 26 PM '74

against

VINCENT A. CATOGGIO,

74C 725

ANN RAFTREY, Defendants

----- X

COMPLAINT

1. Above-listed Defendants have been plotting and conspiring to obstruct justice, and altered sworn testimony, which Plaintiff on January 7, 1974 gave in this Court before said Vincent A. Catoggio, who was acting as U.S. Magistrate. Defendant Raftrey, acting as Court reporter, took minutes of said testimony which, in addition of being transcribed by said Ann Raftrey, was also recorded on tape. Defendants then altered said minutes.

2. The U.S. Attorney's Office informed me that this Court does have jurisdiction over the subject matter, and/or that it is proper for Plaintiff to bring this action in this Court.

3. Defendants' forgery and/or fraud can readily be uncovered by simply comparing the tape-recorded testimony (by playing back the recorded tape and listening to it) with the altered minutes: the modified or tampered transcript contains statements which were never made at said hearing.

4. Plaintiff's name is Edwin Nachbau, who lives at 48 W. 89th Street, New York, New York 10024.

5. Defendants' name and address is: Vincent Catoggio, U.S. Magistrate, U.S. Court House 225 Cadman Plaza East, Brooklyn, New York.

Ann Raftrey, Court Reporter, U.S. Court House 225 Cadman Plaza East, Brooklyn, New York.

6. The relief sought is, first, to set aside or strike from record foresaid altered minutes, and, second, to remove Defendants from public office.

s/Edwin Nachbaur
EDWIN NACHBAUR

Sworn to
May 9th, 1974

A8

MEMORANDUM ORDER OF DISTRICT COURT DISMISSING
CASE NO. 74 CIV. 725

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.

★ MAY 28 1974 ★

----- -X
EDWIN NACHBAUR, :

Plaintiff, :

-against- :

VINCENT A. CATOGGIO, :
ANN RAFTREY, :

Defendants. :
----- -X

TIME A.M. _____
P.M. _____

74 C 725

FILED

MEMORANDUM ORDER

Plaintiff pro se has filed a complaint in this court against the United States Magistrate and court reporter who conducted a hearing in plaintiff's earlier-filed action in this court, Nachbaur v. Dellheim, 72 C 930. At present Nachbaur seeks (1) a setting aside, or striking from the record, the "altered minutes" of a hearing before the defendant United States Magistrate Vincent A. Catoggio, on January 7, 1974, in the case of Nachbaur v. Dellheim, 72 C 930; and (2) the removal of both defendants from public office.

With respect to (1), the court has previously ruled adversely to plaintiff on his claim that the minutes

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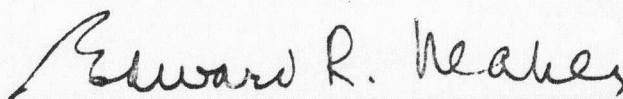
A9

were altered. Nachbaur v. Dellheim, 72 C 930, Memorandum Order of May 10, 1974, dismissing the action. While the court is inclined to view that ruling as dispositive of the claim here, we have nevertheless compared the recorded tapes of the hearing with the minutes and find petitioner's alteration claim to be wholly without merit.

With respect to (2), to the extent it is predicated upon or ancillary to (1), it is likewise without merit. To the extent it may be predicated upon any other consideration, this court has no jurisdiction over a civil action seeking such relief.

Accordingly, to the extent this complaint relates to the court's action in Nachbaur v. Dellheim, 72 C 930, it is treated as an application, under Rule 60, F.R.Civ.P., for relief from the final order in that case, and is hereby denied. To the extent this complaint seeks new relief, the action is dismissed for want of jurisdiction. Rule 12(h)(3), F.R.Civ.P.

So ordered.



U. S. D. J.

Dated: Brooklyn, N.Y.

May 28, 1974

ORDER OF COURT OF APPEALS DISMISSING PLAINTIFF'S APPEAL

UNITED STATES COURT OF APPEALS
Second Circuit

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the twenty-third day of April, one thousand nine hundred and seventy-five

Edwin Nachbaur,

Appellant,

v.

Argo Instruments, et al.,

Appellees.

A motion having been made herein by Appellant pro se for the assignment of counsel

Upon consideration thereof, it is

Ordered that said motion be and it hereby is denied and the appeal is dismissed.

s/ Paul R. Hays
Paul R. Hays
William H. Mulligan
s/ William H. Timbers (per WHM)
William H. Timbers, Circuit Judges

WHM WHT PRH

A true copy
s/ A. David Zeisors Clerk

All

COMPLAINT IN SOUTHERN DISTRICT OF NEW YORK, CASE
NO. 75 CIV. 4296

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK

-----X:
EDWIN NACHBAUR :

Plaintiff(s) :
Pro Se :

- v - :

NATIONAL LABOR RELATIONS BOARD, POLICE DEPARTMENT
CITY OF NEW YORK, WALTER DELLHEIM, ARGO INSTRUMENTS :
CORP., UNITED STATES DISTRICT COURT, EASTERN DISTRICT :
OF NEW YORK :

COMPLAINT

Defendant(s)

-----X
FIRST: Comes now Edwin Nachbaur, with ^{COMPLAINT NO.} petition and prayer before this

Honorable Court. I have been unrightfully deprived of information vital to the clearing of my name and reputation. I have not been allowed to confront my accusers, question their statements, or refute allegations made in reference to my behaviour and actions. I herein pray for the release of such information to me under the provisions as set forth in the Freedom Of Information Act, Public Law 93-502; 83 Stat. 1561. I seek no financial remedy.

SECOND: This Court has jurisdiction by virtue that my residency is within the jurisdictional purview of the United States District Court for the Southern District of New York.

THIRD: I am Edwin Nachbaur. I reside at 48 West 89th Street, New York, New York 10024.

FOURTH: Defendants named herein are as follows:

- 1) National Labor Relations Board
Office of the General Counsel
Washington, D.C. 20570
- 2) Police Department City of New York
New York, New York
- 3) Argo Instruments Corporation
Walter Dellheim, General Manager
New York, New York

4) The Honorable Edward R. Neaher
225 Cadman Place East
Brooklyn, New York

FIFTH: National Labor Relations Board; Action sought;

a) Release of Documents and/or other information submitted by
~~REGIONAL OFFICE OF NLRB AND/OR OTHER PERSON(S)~~ *NO*
general counsel, NLRB, to establish basis of administrative ruling to uphold my
dismissal from employment . . .

Police Department City of New York, action sought:

a) Records of statements taken and investigation conducted by
officers of the New York City Police Department as a result of an incident in
the mens' locker room of Argo Instruments Corporation, in which my outer jacket was
slashed by person or persons ~~(redacted)~~ .

Argo Instruments Corporation, Walter Dellheim, action sought;
~~AND/OR TRANSCRIPT OF SAID STATEMENTS~~ *NO*

a) Copy of original statements of interrogation and testimony between
complainant and Walter Dellheim pertinent to the police investigation of the
locker room incident of complainants defaced clothing in the locker room of
Argo Instruments Corporation. b) ~~FALSIFIED OR FORGED AND/OR ALTERED VERSION~~
~~OF SAID TRANSCRIPT AS USED BY WALTER DELLHEIM~~
~~AS FALSE EVIDENCE IN STATE LABOR COURT~~ *NO*
Honorable Edward R. Neaher, action sought:

a) Court tape transcript and true duplication of tape-recorded
~~U.S. MAG. VINCENT CHIOGGIO~~ *NO*
testimony given before Judge Edward R. Neaher on January 7, 1974, in the United
States District Court, Eastern District of New York .

[Handwritten signature]

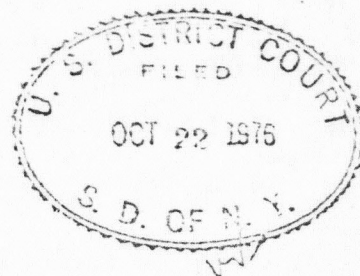
[Handwritten signature]
EDITH NACHMAN

Sworn to before me this
22nd
February day of February 1975.

NOTARY PUBLIC
JAMES J. JAMES
NEW YORK
NO. 12345678
COUNTY OF NEW YORK
FILED IN OFFICE OF THE
CLERK OF THE COURT

A13

JUDGMENT AND OPINION OF COURT DISMISSING
CASE NO. 75 CIV. 4296



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
EDWIN NACHBAUR

Plaintiff

: 75 Civil 4296 (RLC)

-against-

NATIONAL LABOR RELATIONS BOARD,
POLICE DEPARTMENT, CITY OF NEW YORK,
WALTER DELLHEIM, ARGO INSTRUMENTS
CORP., UNITED STATES DISTRICT COURT,
EASTERN DISTRICT OF NEW YORK

: JUDGMENT

Defendants
----- X

Plaintiff having moved the Court for the appointment of counsel and defendants having moved the Court pursuant to Rule 12(b)(6), of the Federal Rules of Civil Procedure, and the said motions having come on to be heard before the Honorable Robert L. Carter, United States District Judge, and the Court thereafter on October 19, 1976, having handed down its opinion denying plaintiff's motion for appointment of counsel, and granting motion to dismiss, it is,

ORDERED, ADJUDGED and DECREED: That defendants NATIONAL LABOR RELATIONS BOARD, POLICE DEPARTMENT, CITY OF NEW YORK, WALTER DELLHEIM, ARGO INSTRUMENTS CORP., UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF NEW YORK, have judgment against plaintiff EDWIN NACHBAUR dismissing the complaint.

Dated: New York, N.Y.
October 22, 1976

O P I N I O N

Plaintiff's motion for the appointment of counsel is hereby denied and his complaint is hereby dismissed for failure to state a claim upon which relief can be granted, pursuant to Rule 12(b)(6), F.R.Civ.P., and on the further ground that the instant motion is barred by the doctrine of res judicata. Plaintiff's motion to amend his complaint to seek money damages from the defendants is denied for the same reasons.

Plaintiff's action, apparently based on the Freedom of Information Act, 5 U.S.C. §552, seeks the production of a variety of documents. It is clear that this court has no jurisdiction under that statute to order the production of documents from the New York City Police Department or from private corporations and individuals. Furthermore, the production sought by the plaintiff from Judge Edward R. Neaher, United States District Judge for the Eastern District of New York and/or from Magistrate Vincent A. Catoggio, United States Magistrate, Eastern District of New York, requires no court order since the court transcripts, to the extent that they exist, are matters of public record and easily obtained without the necessity for court process. In any event, as will appear more fully, this matter has already been canvassed by Judge Neaher in a prior proceeding.

The only item in plaintiff's complaint which is properly before this court is what plaintiff refers to as "documents and/or other information submitted by the general counsel, Regional Office of NLRB and/or other person(s) [of] NLRB, to establish basis of administrative ruling to uphold my dismissal from employment."

It is clear to me that plaintiff's complaint must be dismissed with respect to this matter as well. The discovery sought here has already been sought in connection with a prior action brought by the plaintiff in the Eastern District of New York before Judge Neaher, captioned "EDWIN NACHBAUR v. WALTER DELLHEIM, et al., 72 C 930."

On September 24, 1973, Judge Neaher referred this action to the Honorable Vincent A. Catoggio, United States Magistrate to conduct pretrial proceedings and to serve as special master for purposes of a hearing. The Magistrate fully canvassed the issues before him--including the discovery sought by the plaintiff which encompassed the same items of discovery sought here. In a 12-page report issued February 11, 1974, the Magistrate, acting as special master, recommended that the plaintiff's complaint be dismissed. He further found as follows:

"5. From the names of the persons on whom the plaintiff caused subpoenas to be served coupled with the plaintiff's own testimony and papers on file in this Court, to require these prospective witnesses to appear in Court and to be subjected to interrogation by the plaintiff would be a useless, undesirable and highly unjust abuse of the judicial processes."

On May 9, 1974, Judge Neaher issued an order adopting the report of the Magistrate in all respects and dismissing the plaintiff's action.

Finally, on May 28, 1974, Judge Neaher dismissed a new complaint filed by Mr. Nachbaur against the United States Magistrate and the Court Reporter present at the hearing in plaintiff's earlier action in the Eastern District. That complaint sought to set aside or strike from the record the "altered minutes" of that hearing. Judge Neaher noted that he had compared the recorded tapes of the hearing with the minutes and found petitioner's claim of alteration to be "wholly without merit."

In sum, it appears that all matters raised in the instant complaint have been fully reviewed in the two prior proceedings before Judge Neaher. Plaintiff's motion to amend the complaint to recover money damages from the defendants does not change this,

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Accordingly, plaintiff's complaint is
dismissed.

IT IS SO ORDERED.

Dated: New York, New York
October 15, 1976

A handwritten signature in cursive script, appearing to read "Robert L. Carter", is written over a horizontal line.

ROBERT L. CARTER
U.S.D.J.

A18

DETERMINATION OF NLRB DENYING PLAINTIFF'S REQUEST FOR
INFORMATION PURSUANT TO FREEDOM OF INFORMATION ACT



NATIONAL LABOR RELATIONS BOARD

OFFICE OF THE GENERAL COUNSEL

Washington, D.C. 20570

July 29, 1975

Re: Argo Instruments Corp.
Case No. 29-CA-2044

Mr. Edwin Nachbaur
46 West 89th Street
New York, New York 10024

Dear Mr. Nachbaur:

Your appeal from the Regional Director's refusal to furnish information requested in your letter of April 26, 1975, has been duly considered.

The appeal is denied. Without regard to the applicability of exemption 4 of the Freedom of Information Act, 5 U.S.C. Section 552(b)(4), (hereinafter the "FOIA"), the documents requested are privileged from disclosure under exemptions 5 and 7(A), (C) and (D) of the FOIA, 5 U.S.C. Section 552(b)(5), (7(A)), (7(C)) and (7(D)).

Exemption 7(A) exempts from disclosure investigatory records where disclosure would interfere with enforcement proceedings. In the investigation of unfair labor practice cases much information, including statements, is obtained from individuals who would be reluctant or would refuse to supply such information if it were routinely disclosable pursuant to a request under the Freedom of Information Act. In the administration of the Act, the Agency must be able to obtain in its investigations all potentially relevant information. The protection of the identity of individuals and the substance of the information they submit in the Agency's investigation is an important means of assuring the Agency's continuing ability to obtain such relevant information. Individuals giving statements in the investigation are given express assurances that sworn statements will not be disclosed unless and until the individual is called as a witness in a formal proceeding, as provided for in Section 102.118(b) of the Board's Rules and Regulations. If the Agency were forced to disclose statements submitted or obtained during the investigation of the case, in circumstances other than those provided by Section 102.118(b) of the Board's Rules and Regulations, it would substantially deter voluntary cooperation of

Re: Case No. 29-CA-2044

- 2 -

witnesses, hinder obtaining sworn information from all potential sources and, consequently, substantially interfere with present and future enforcement proceedings. See, Barceloneta Shoe Corp. v. Compton, 271 F. Supp. 540 (D.C. Ga.) affmd., N.L.R.B. v. Clement Brothers Co., 407 F.2d 1027 (C.A. 5); Wellman Industries, Inc. v. N.L.R.B., 490 F.2d 427 (C.A. 4), cert. denied, 419 U.S. 834; cf. N.L.R.B. v. Scrivener, 405 U.S. 117; N.L.R.B. v. Golden Age Beverage Co., 415 F.2d 26 (C.A. 5).

Also, since these statements contain matter personal to the individual supplying the statement and to individuals referred to in the statements, they are exempt from disclosure under exemption 7(C). This exemption protects the personal privacy of individuals submitting statements and individuals named therein, and requires the balancing of their interests in privacy against the interest of a requesting party in disclosure. You have submitted no considerations which would overcome the privacy rights of individuals and, therefore, their right of privacy must prevail.

The requested statements are also within exemption 7(D) because their disclosure would reveal the identity of a confidential source, i.e., an individual who provides information under an express assurance of confidentiality or in circumstances from which such assurances can reasonably be inferred. As noted above, individuals giving statements to the Agency during the investigation are advised and assured that their statements will remain confidential, except as provided by Section 102.118 of the Board's Rules and Regulations. This policy of protecting confidential sources of information has been consistently followed in the administration of the Act and is well known to those persons dealing with this Agency. Accordingly, since the individuals furnishing statements in the instant case are confidential sources, exemption 7(D) authorizes our refusal to identify the witnesses.

The investigatory files also include documents containing selective findings of fact and the recommendations of the Board Agent which constitute intra-agency memoranda reflecting the Agency's deliberative and consultative process. As such, these documents comprise part of the attorney's work product and are privileged from disclosure under exemption 5. See N.L.R.B. v. Sears Roebuck & Co., 95 S. Ct. 1504 (1975) and Renegotiation Board v. Grumman Aircraft Engineering Corporation, 95 S. Ct. 1491 (1975). And, to the extent such documents identify individuals giving statements and reveal the contents of their statements, they are further privileged from disclosure under exemption 7(A), (C) and (D) for the reasons set forth above.

Re: Case No. 29-CA-2044


- 3 -

The undersigned, Robert E. Allen, at the direction of, and pursuant to the policies established by, General Counsel Peter G. Nash, is responsible for the determination that the records you requested are privileged from disclosure under the Freedom of Information Act.

Judicial review of this determination may be obtained by filing a complaint in the district court of the United States in the district in which the complainant resides, or has his place of business, or in which the records are situated, or in the District of Columbia, as provided in the FOIA, 5 U.S.C. Section 552(a)(4)(B).

Very truly yours,

Peter G. Nash
General Counsel

By 
Robert E. Allen
Director, Office of Appeals

cc: Director, Region 29

PROSNITZ

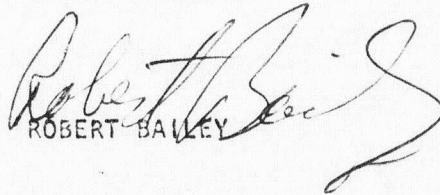
STATE OF NEW YORK)
: SS.
COUNTY OF RICHMOND)

ROBERT BAILEY, being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 286 Richmond Avenue, Staten Island, N. Y. 10302. That on the 8 day of ~~XXXX~~ March 1977 deponent served the within *Appendix* upon

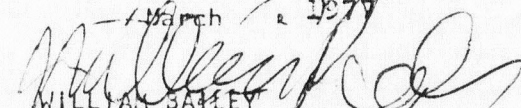
Cassin & Cassin, Esqs.
H.L. Richmand, Esq.
Hon. W. Bernard Richland, Corp. Counsel,
U.S. Atty., Eastern District of NY
U.S. Atty., So. Dist. of NY
attorney(s) for
Appellees

in this action, at
60 East 42nd St., NYC
16 Court St., Brooklyn, NY
Municipal Building, NYC
225 Cadman Plaza East, Brooklyn, NY and
1 St. Andrews Pla., NYC

the address(es) designated by said attorney(s) for that purpose by depositing
_____ copies of same enclosed in a postpaid properly addressed wrapper, in an
official depository under the exclusive care and custody of the United States
post office department within the State of New York.


ROBERT BAILEY

Sworn to before me, this 8 day
of March 1977


WILLIAM BAILEY
Notary Public, State of New York
No. 43-0132945
Qualified in Richmond County
Commission Expires March 30, 1978